In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 403

NATIONAL MARITIME UNION OF AMERICA, AFL–CIO,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 18–35) is reported at 346 F. 2d 411. The Board's Decision and Order (J.A. 1–27) [1] are reported at 147 NLRB 1328.

JURISDICTION

The decree of the court of appeals was entered on May 5, 1965 (Pet. 36). The union's petition for rehearing was denied on May 14, 1965. The petition

[1] "J.A." refers to the Joint Appendix filed in the court of appeals.

785-520—65

for a writ of certiorari was filed on July 28, 1965. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Board has jurisdiction to prevent an unfair labor practice arising out of an inter-union controversy concerning representation.

2. Whether the protection afforded neutral employers by Section 8(b)(4)(B) of the Act covers a situation where the union's ultimate dispute is with another union rather than with another employer.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are set forth at pages 16–17 of the petition.[2]

STATEMENT

A. *The Board's findings of fact.* The present case arises out of a dispute concerning representation of employees on the *S.S. Maximus* between the Marine Engineers Beneficial Association (MEBA) and the Seafarers International Union (SIU)[3] on the one

[2] Section 10(a), also relevant, provides that:

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *"

[3] Petitioner contends (Pet. 5) that, by originally referring to SIU as the union which petitioner was opposing and later amending its opinion to substitute "MEBA" where it had used "SIU" before, the court below evinced a basic misunderstanding of the issues. This contention is without substance. NMU's official organ, reporting on the incidents involved here, carried the boldface heading: "NMU Answers SIU Disruption On Waterfront." The report itself contained numerous references

hand, and the National Maritime Union (NMU), petitioner here, and its affiliate, the Brotherhood of Marine Officers (BMO), on the other. In June 1963, the *Maximus,* which the Grace Line recently had sold to Cambridge Carriers, arrived in the Port of Philadelphia to take on cargo. When Grace owned the *Maximus,* it had been manned by members of MEBA. After the vessel was sold to Cambridge Carriers, the MEBA engineers were replaced by members of BMO. On June 10, 1963, MEBA began to picket the *Maximus* with signs characterizing Cambridge Carriers as unfair to MEBA engineers. In retaliation, NMU established picket lines at various places in the Port of New Orleans, where ships with MEBA members in their crews had docked. Similar "response" picketing of MEBA-manned ships occurred in Philadelphia, Houston and Galveston.[4]

On June 17, 1963, NMU began picketing Delta Steamship Lines' Poydras Street wharf, where the *S.S. Del Valle* was in port, and Bloomfield Steamship Company's Cotton Warehouse wharf, where the *Neva West* was docked (J.A. 2, 40–41, 68). The

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to SIU and "SIU–MEBA", indicating those allied unions were the targets of NMU's actions. See the Joint Appendix filed with this Court in the case arising out of NMU's picketing at the Port of Philadelphia, No. 334, this Term, p. 129. See also n. 5, *infra*, and accompanying text.

[4] This picketing was found unlawful by the Board in decisions reported at 147 NLRB 1317 (Philadelphia), and 147 NLRB 1243 (Houston and Galveston). On March 5, 1965, the Court of Appeals for the Second Circuit enforced the Board's orders in these cases, 342 F. 2d 538 (Pet. 37–50). The union's petition for certiorari to review the Second Circuit's decision was filed July 9, 1965, and the Board has filed a brief in opposition (No. 334, this Term).

pickets carried signs which read: "Informational Picketing MEBA Engineers Interfere With Lawfully Recognized N.M.U." (J.A. 28, 41). Both Delta and Bloomfield had bargaining agreements with MEBA and SIU; neither had an agreement with NMU or BMO (J.A. 2, 41, 46–47, 64). NMU did not have a dispute with either company (J.A. 2, 47, 52, 64–66).

On June 17 and 18, the longshoremen ordered by Delta to unload the *Del Valle* refused to cross NMU's picket line (J.A. 3, 39–40, 42–43). When the ship was moved from the wharf to a general anchorage point, the picketing ceased (J.A. 43–44). Later on June 18, Delta's *S.S. Del Mar* arrived at the Poydras Street wharf, and, there being no pickets, the longshoremen ordered by Delta to unload passengers and cargo did so (J.A. 44). On June 19, NMU resumed picketing, and the longshoremen again refused to cross the picket line to complete unloading the *Del Mar* or to unload the *Del Valle,* which had been brought back to the wharf (J.A. 3, 44–45, 48–49). Neither ship was unloaded until the afternoon of June 20 when, because the dispute involving the *Maximus* in Philadelphia had been settled, the picketing in New Orleans ceased.

In the meantime, Delta had awarded contracts for repairs needed on the *Del Valle* to Buck Kriehs and Company and Best Electric Company. Kriehs' general manager informed Delta that he could supply no men as long as there was a picket line. Best's shop superintendent came to the ship to pick up a part for repair, but he refused to cross NMU's picket line and did not receive the part (J.A. 53–54). Delta's own car-

penters and painters, after consultation with their union business agents, refused to cross NMU's picket line to work on the *Del Valle* (J.A. 55).

The picketing of the *Neva West,* from June 17 through June 20, produced similar results. During this time Bloomfield's port agent, States Marine Agency, ordered, through T. Smith and Company, a gang of longshoremen to work on the vessel. The men would not cross NMU's picket line, and no work was done on the ship (J.A. 3, 67–68, 69–71, 73–75, 76).

Forklift operators employed by States Marine encountered NMU pickets at the intersection of two streets leading to the Cotton Warehouse docks on the morning of June 17. The operators, members of the International Longshoremen's Association, did not cross the picket line but telephoned the ILA delegate who later arrived on the scene and told the NMU pickets they were "picketing the wrong place" (J.A. 80–82). After making a phone call, one of the pickets stated to the ILA delegate, "We are not picketing the docks. We are picketing the ship to keep the longshoremen from going on" (J.A. 4, 82). Thereafter, the pickets moved to the vicinity of the *Neva West* and the forklift operators reported for work on the docks (J.A. 71–72).

After Dixie Machine, Metal and Welding Works, Inc., a marine repair company, had received an order to repair a line on the *Neva West,* its pipefitter foreman went to the vessel and asked NMU's picket whether he could go aboard to make the repair. The picket refused to grant him permission to board (J.A.

4, 78–79). After the picketing had ceased, the pipefitter returned and made the repair (J.A. 79).

Faced with the refusal of longshoremen and others to cross the picket line, Bloomfield's vice-president, Weickhoff, telephoned NMU's port agent, George, on June 18 and asked him to call off the pickets. George refused to order a halt to the picketing although he stated he had full authority to do so (J.A. 4–5, 60–61). Weickhoff renewed his request on June 19, but George responded that "we want you to be good and mad and make a lot of noise. * * * I want you to call Paul Hall[5] and tell him to call off the MEBA pickets on the *Maximus*" (J.A. 4–5, 63).

B. *The Board's conclusions and order.* Upon the foregoing facts, the Board concluded that NMU had violated Section 8(b)(4)(B) of the Act. The Board found that NMU had induced and encouraged employees of Delta, Bloomfield, States Marine, T. Smith and Company, Best Electric, and Dixie Machine to strike, and had restrained and coerced those neutral employers and Buck Kriehs and Company, with an object of forcing them to cease doing business with each other and with other persons (J.A. 6–7). The Board ordered NMU to cease and desist from the unfair labor practices found, and to post appropriate notices (J.A. 8–10).

C. *The court of appeals' decision.* The court of appeals sustained the Board's findings and enforced its order (Pet. 18–36).

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[5] International President of SIU.

ARGUMENT

The present case and *National Maritime Union* v. *National Labor Relations Board* (No. 334, this Term) raise identical issues, a detailed discussion of which is contained in our brief in opposition to the petition for certiorari filed in the latter case. Briefly stated, the government's position is that the decision below is correct and is not in conflict with that of any other circuit. The court below, like the Second Circuit in the companion case (No. 334), found no occasion to reach the question, discussed in *National Labor Relations Board* v. *International Longshoremen's Ass'n* (*Tulse Hill*), 332 F. 2d 992 (C.A. 4) (picketing for political reasons), whether a "labor dispute" as defined in Section 2(9) of the Act is a prerequisite to the Board's jurisdiction over unfair labor practices. Even if such a dispute is required, it is present in this case. Moreover, the protection offered to neutral employers by Section 8(b)(4)(B) is not limited to situations in which the union's dispute is with a primary employer rather than with another union. The court below agreed with the Second Circuit's decision in the companion case that *Douds* v. *International Longshoremen's Ass'n*, 224 F. 2d 455 (C.A. 2), certiorari denied, 350 U.S. 873, is not an authoritative precedent for the contrary view.

CONCLUSION

For the reasons more fully set forth in our brief in opposition to the petition for certiorari filed in No. 334, this Term, we respectfully submit that the petition for a writ of certiorari in the present case should also be denied.

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